DIN YAHYA

v.

PUBLIC PROSECUTOR

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
MOHD. AZMI SCJ
EUSOFF CHIN J
[CRIMINAL APPEAL NO. 05-79-89]
25 NOVEMBER 1991

CRIMINAL PROCEDURE: *Cautioned statement - Wording of - Malay translation - Whether followed wording in s. 37A(1)(b) - No comma after the words 'atau tidak' in Malay translation - Whether caution capable of 2 meanings - Effect of intention of caution - Grammar - Dangerous Drugs Act 1952, ss. 37A(1)(b), 39B(2).*

The appellant had been charged and convicted with trafficking in dangerous drugs under s. 39B of DDA 1952. The issue was whether the cautioned statement which was administered in Bahasa Malaysia to the appellant before he gave his statement was defective as it did not follow the wording in s. 37A(1)(b) of the DDA and further because there was no comma after the words "atau tidak".

Held:

[1] The words "words to the like effect" in s. 37A(1)(b) of the DDA means that the caution prescribed must be administered in full, although it is not essential that it must be in exactly the precise form prescribed by that section. It is the whole effect and intention of the caution which must be looked at, and not merely the actual words used.

[2] Although the words used by the recording officer were not precisely as those prescribed by s. 37A(1)(b) of the DDA, they were words having the like effect on the accused as those prescribed under s. 37(1)(b) of the DDA.

[3] The omission of the second comma after the word 'tidak' does not give rise to two meanings as suggested by defence Counsel. The word 'tidak' is followed by the word 'maka' and 'maka' is always used at the beginning of a clause or phrase so that anyone reading the caution has to pause before the word 'maka'. Even without the word 'maka', a person reading the caution grammatically would still manifestly be required to pause after the word 'tidak' because the words 'sama ada bagi menjawab apa-apa soalan atau tidak' is a clause in the sentence constituting the caution.

[4] Similarly, looking at the sentence from a purely grammatical point of view, the Malay version of the caution as translated by the Lembaga Penyelidikan Undang-undang, even without the comma after the word 'tidak' would still be capable of giving only one meaning which is that anything said may be given in evidence notwithstanding that what is said is in answer to a question or not.

[Appeal dismissed.]

[**Bahasa Malaysia** Translation of Headnote]

PROSEDUR JENAYAH: *Pernyataan beramaran - Penyusunan kata-kata - Terjemahan Bahasa Malaysia - Sama ada menurut penyusunan kata-kata dalam s. 37A(1)(b) - Tiada koma selepas perkataan 'atau tidak' dalam terjemahan Bahasa Malaysia - Sama ada ini*

menjadikan amaran itu mempunyai dua makna - Kesan dan tujuan amaran itu - Tatabahasa - Akta Dadah Berbahaya 1952, ss. 37A(1)(b) & 39B(2).

Perayu telah dituduh dan disabitkan atas kesalahan mengedar dadah berbahaya dibawah s. 39B Akta Dadah Berbahaya 1952 (Akta tersebut). Yang menjadi isu dalam kes ini ialah apakah kesan keatas pernyataan amaran sekiranya amaran itu tidak tepat sepertimana yang dikandungi dibawah s. 37A(1)(b) Akta tersebut.

Diputuskan:

[1] 'Kata-kata yang mempunyai kesan sedemikian' dalam s. 37A(1)(b) Akta tersebut bermaksud amaran yang diberi hendaklah dibuat dengan lengkap namun tidak semestinya bertepatan dengan apa yang tertera dalam seksyen tersebut. Pertimbangan harus diberi kepada kesan keseluruhan dan tujuan amaran itu dan bukan hanya kepada kata-kata yang digunakan.

[2] Walaupun perkataan-perkataan yang digunakan oleh pegawai perakam bukan bertepatan seperti yang tertera dalam s. 37A(1)(b) Akta tersebut, perkataan tersebut adalah kata-kata yang mempunyai kesan sedemikian seperti yang tertera dalam s. 37(1)(b) Akta tersebut.

[3] Peninggalan koma kedua selepas perkataan tidak' tidak membawa dua makna seperti yang dicadangkan oleh peguam pembelaan. Perkataan 'tidak' diikuti dengan perkataan 'maka' dan 'maka' selalunya digunakan dihadapan klausa atau ungkapan dan sesiapa yang membacakan amaran hendaklah berhenti sejenak sebelum perkataan 'maka'. Malahan tanpa perkataan 'maka', orang yang membacakan amaran dari segi tatabahasa adalah jelas dikehendaki berhenti sejenak selepas perkataan 'tidak' kerana perkataan 'sama ada bagi menjawab apa soalan atau tidak' adalah satu klausa dalam ayat yang membentuk amaran itu.

[4] Juga, apabila ayat itu diteliti dari segi tatabahasa versi Melayu seperti yang diterjemahkan oleh Lembaga Penyelidikan Undang-Undang, walau tanpa koma selepas perkataan 'tidak' akan memberikan satu makna sahaja iaitu sebarang pernyataan boleh diberikan dalam keterangan meskipun apa yang diperkatakan adalah jawapan kepada soalan atau tidak.

[Rayuan ditolak.]

Cases referred to:

PP v. Kamde b. Raspani [1988] 2 CLJ (Rep) 251 ***(cit)***
PP v. Lee Chee Meng [1990] 2 CLJ (Rep) 728 ***(cit)***
Push v. Ashutosh Sen [1929] AIR PC 69 ***(foll)***

Legislation referred to:

Dangerous Drugs Act 1952, ss. 37A(1)(b), 39B(2)

For the appellant - Karpal Singh (V. Sithambaram with him); M/s. Kumar, Sitham & Co.
For the respondent - Dato' Stanley Issacs, Senior Federal Counsel for Attorney General of Malaysia

JUDGMENT

Eusoff Chin J:

On 20 August 1991 we dismissed this appeal and indicated that we will give our reasons why the two cautioned statements made by the appellant under s. 37A(1) of the Dangerous Drugs Act 1952, were properly admitted by the learned trial Judge.

The appellant was charged with trafficking in cannabis weighing 439.6 grammes. He was tried, found guilty, convicted and sentenced to death on 21 August 1989 by the Penang High Court under s. 39B(2) of the Dangerous Drugs Act 1952.

At the trial in the High Court, the prosecution tendered two cautioned statements of the appellant given under s. 37A(1) of the Dangerous Drugs Act 1952 which were admitted in evidence by the learned trial Judge. The learned Counsel for the appellant, Karpal Singh submitted that on each of the 2 occasions, the caution administered to the appellant before the appellant gave his statement was defective because it did not follow the wording in s. 37A(1)(b) of the Act and also because there was no comma after the words "atau tidak" and citing *PP v. Kamde b. Raspani* [1988] 2 CLJ (Rep) 251 and *PP v. Lee Chee Meng* [1990] 2 CLJ (Rep) 728 he said that the cautions were not properly administered to the appellant. On each occasion the caution as typed in the form in which the cautioned statement was recorded, was worded as follows:

> Adalah kewajipan saya memberi tahu kepada kamu bahawa kamu tidak di paksa berkata apa-apa atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan samada bagi menjawab apa soalan atau tidak maka boleh digunakan sebagai keterangan.

Karpal Singh said that because the comma after the words "atau tidak" was not inserted, the caution was capable of two meanings, that is, either that what the accused said could be used in evidence or that it could not be used in evidence against him as was held in the two cases cited by him.

In each of those two cases the learned Judges did not quote in their judgments what were the words used in the caution which was administered to the accused by the police officer before he recorded the statement from the accused. We are therefore unable to make any observation on those judgments. The learned Judges also found that the statements were not made voluntarily by the accused and rejected them.

The proviso in s. 37A(1)(b) of the Dangerous Drugs Act 1952 states:

> Provided that no such statement shall be admissible in evidence ...
>
> (b) in the case of a statement made by such person after his arrest, unless the Court is satisfied that a caution was administered to him in the following words or **words to the like effect:**
>
> **'It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say whether in answer to a question or not, may be given in evidence'**
>
> (Emphasis added)

There is no Malay version of this Act but the Malay version of the caution as translated by the Lembaga Penyelidikan Undang-undang is:

> Adalah menjadi kewajipan saya untuk memberi amaran kepada kamu bahawa kamu tidaklah diwajibkan menyatakan sesuatu atau menjawab apa-apa soalan, tetapi apa-apa jua yang kamu nyatakan, samada sebagai menjawab sesuatu soalan atau tidak, boleh diberi sebagai keterangan.

The warning part in the caution is that part up to the first comma, while the remaining part merely indicates the use to which the statement, if given, may be put. The words "words to the like effect" in s. 37A(1)(b) of the Act means that the caution prescribed must be administered in full, although it is not essential that it must be in exactly the precise form prescribed by that section. It is the whole effect and intention of the caution which must be looked at, and not merely the actual words used.

In this appeal, the caution administered by the recording officer did not contain the precise words in Malay as that translated by the Lembaga Penyelidikan Undang-undang. The recording officer had himself translated into Malay the caution, and administered it to the

appellant. The words used by him in the caution had the same effect and intention as those prescribed in s. 37(1)(b) of the Act. The words which he used:

> Adalah kewajipan saya memberi tahu kamu bahawa kamu tidak dipaksa berkata apa-apa atau menjawab apa-apa soalan,

contained the necessary warning to the appellant, and the rest of the caution which is:

> tetapi apa jua yang kamu katakan samada bagi menjawab apa soalan atau tidak maka boleh digunakan sebagai keterangan

was merely to indicate to the accused the use to which the statement may be put. The recording officer asked the appellant:

> adakah kamu faham akan maksud amaran diatas?

and the appellant replied:

> ya, saya faham.

We are of the view that although the words used by the recording officer are not precisely as those prescribed by s. 37A(1)(b) of the Act they are words having the like effect on the accused and we therefore hold that the caution administered was in full, and in compliance with the requirements of the law.

As regards the omission of the second comma after the word 'tidak', this does not in our view give rise to two meanings as suggested by Karpal Singh. The word 'tidak' is followed by the word 'maka', and 'maka' is always used at the beginning of a clause or phrase so that any one reading the caution has to pause before the word 'maka'. Even without the word 'maka', a person reading the caution grammatically would still manifestly be required to pause after the word 'tidak' because the words "samada bagi menjawab apa soalan atau tidak" is a clause in the sentence constituting the caution.

Similarly, looking at the sentence from a purely grammatical point of view, the Malay version of the caution as translated by the Lembaga Penyelidikan Undang-undang, even without the comma after the word 'tidak', would still be capable of giving only one meaning which is that anything said may be given in evidence notwithstanding that what is said is in answer to a question or not. Their Lordships of the Privy Council in *Push v. Ashutosh Sen* [1929] AIR PC 69 at 71 observed:

> The truth is that, if the Article is read without the commas inserted in the print, as a Court of law is bound to do, the meaning is reasonably clear.

For the reasons given, we find that the learned Judge had correctly admitted the two cautioned statements in evidence at the trial of the appellant.

Also found at [1992] 1 CLJ 17